In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1541

SCHOOL DISTRICT OF THE CITY OF FERNDALE, MICHIGAN, PETITIONER

v.

UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The General Counsel of the Department of Health, Education, and Welfare instituted administrative proceedings in 1969 to determine whether petitioner, which was then receiving federal financial assistance, was causing black school children to be subjected to discrimination in violation of Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d. The hearing examiner found that petitioner had purposely established and maintained unlawful racial segregation in its schools, and he ordered the termination of federal financial assistance to petitioner until it complies with the relevant federal legal requirements (Pet. App. 1a-52a).[1] This

[1] The order excepted federal financial assistance for petitioner's adult education programs (Pet. App. 48a-50a).

decision was adopted, with minor modifications and amendments, by the Department's four-man Reviewing Authority (Pet. App. 53a-94a), and the Secretary denied petitioner's request for futher administrative review (Pet. App. 95a-96a). The court of appeals affirmed the administrative order *per curiam* (Pet. App. 98a).

Petitioner, by characterizing this case as involving a racially neutral system of pupil assignments to neighborhood schools, in effect contends that the administrative findings and order were not supported by substantial evidence. The hearing examiner expressly found that petitioner had discriminated among students and faculties on the basis of race (Pet. App. 4a-5a):

> * * * The weight of the evidence requires the findings * * * that the School Board established * * * a separate school for Negro children for the purpose of segregating the Negro children in the Grant area from the white children in its elementary schools; that it continued to maintain the school with an all-black student body for that purpose; and that it assigned a segregated teaching faculty to the school for many years in accordance with a purpose to discriminate * * * ; that the School Board's course of conduct for forty-four years has been consistently one of segregating the Negro children residing in the Grant area and the Township, from the Ferndale City elementary schools.

This broad finding of discrimination was based on numerous findings of specific actions by petitioner designed to establish or maintain racial segregation (see Findings of Fact Nos. 14-67, Pet. App. 27a-34a). The court of appeals reviewed the extensive record on which these findings were based and expressly upheld

them as supported by substantial evidence (Pet. App. 98a). This evidentiary issue warrants no further review.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1973.

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[2] Petitioner also asserts that the hearing examiner erred in admitting evidence of racial discrimination by other persons. The hearing examiner ruled that evidence of racial discrimination by local governmental agencies and private persons was properly admissible to show that "the residential segregation and the school segregation each supported the other" (Pet. App. 5a). Moreover, the hearing examiner explicitly refused to find that petitioner's reliance on the concept of neighborhood schools, in conjunction with residential segregation, constituted *de jure* school segregation (Pet. App. 5a, 20a-23a). Thus the Reviewing Authority, in considering petitioner's objections to the evidence as irrelevant, concluded that any error was harmless since much of the evidence of third-party racial discrimination was of no "consequence to the ultimate disposition of this proceeding" (Pet. App. 80a, 82a) and the remainder had been properly admitted for the narrow purpose of showing petitioner's intentional reinforcement of such third-party discrimination.